The Madras Law Journal.

Vol. XXIII.] NOVEMBER, 1912. [Part XVII.

JOTTINGS AND CUTTINGS.

The following is an extract from the address delivered at the recent annual meeting of the Law Society by Mr. C. L. Samson, the President.

The Position of the Profession.

I come to the second part of my address, and I want to say at the outset, and it should be distinctly understood, that the views I am going to lay before you, the opinions I am about to express, are my individual views—my personal opinions—and in no wise bind the Council. They are as free as the birds of the air to adopt or reject any of the views I am going to place before you. Well, now, I wish you to consider three things—the position of the profession, the prospect of the profession, and whether any thing can be done to improve them. Now, as regards the position of the profession, are you satisfied with it? I confess I am far from satisfied; I am absolutely dissatisfied. I have shown you in the first part of my address that we have done everything in our power, and are doing everything in our power, to improve the status of the profession. At the outset we wish to improve the student by raising the standard of examination; whilst he is an articled clerk we wish to extend to him every advantage which we can for pursuing his studies and for qualifying himself to be a solicitor; when he is a solicitor, as I have said, we are most jealous of the honour of the profession. But having done all this, when you consider the great expense and time that it takes to become a solicitor, what inducements does the profession offer? Gentlemen, we constantly see in the papers offers by qualified solicitors to become clerks at 120*l*., 130*l*., and 140*l*. a year. Do we not constantly hear of solicitors leaving the professsion? Do we not frequently hear fathers bewailing the fact that they have put their sons into their business? Is 120*l*. or 130*l* or 140*l*. a year to be the end-all of a solicitor's profession? Do we not constantly find that the work is decreasing and that the remuneration is becoming smaller? Now

what is this due to? Is it due to the fact that solicitors are not required as much as before? In my view, certainly not. The relations of society are becoming daily more complex, and I think the old times when a client who called his solicitor 'Mr. Necessity,' and on being asked why he did so said, 'Necessity knows no law, and I am sure you do not,' have long since disappeared. Is it due to the fact that the profession is overcrowded? I do not think so. The population is constantly increasing, and there has not been of late years anything like the proportionate influx into the profession that there was before. To what is it due? Now to my mind it is due to several causes. The first is officialism, and the inroad made on our profession and the emoluments taken by public departments. Well, gentlemen, it may be a good thing, and it may be a bad thing, for the State to try to do everything. This is not a political assembly, and I am not going to discuss that question at length, but I only simply say as regards this. I think we ought to watch and pray.

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The Decline in Litigation.

But far more important than officialism, I think, is the decline in litigation. Litigation, after all, is, or ought to be the mainspring of the business, of the rank and file of the profession. And please understand that in these remarks I am not seeking the ears of the very favoured few who have either inherited that which came down from generation to generation, or the still more fortunate few who have, by great talent and great perseverance, made a great commercial business for themselves in the City of London or one of the large provincial centres. What I am asking now is the attention of what I call the rank and file of the profession, and I say this state of things is due to three things—delay, uncertainty, and cost. Now, as regards delay, the Government have told us they propose to appoint a new Judge in the King's Bench Division. To my mind this is simply playing with the question; I think they ought to have taken a bold step and appointed two. As regards uncertainty, I think the constant upsetting of decisions in the Court of Appeal, and the constant restoring of the decisions below by the House of Lords, is most disturbing to the public, and I believe that quick, certain, though bad law is sometimes to be preferred to slow, uncertain, and good law. But, gentlemen, the chief deterrent is the expense of litigation. Now, what is this caused by? Not by the remuneration of the poor solicitors. It is caused by Court fees, counsel's fees, and fees of expert witnesses.

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The Growth of Counsel's Fees.

I have been in practice for a great number of years; I went to the office as a lad of 14. I shall be 60 in January next, so I have been nearly 46 years in the profession, and I have seen all sorts and conditions of practice, and possibly I can speak with more varied—I will not say greater experience but more varied experience than some of my colleagues on the Council, because I have seen practice both in London and the provinces. I remember the time when there were quite as eminent members of the Bar as there are now, and when the fees paid to those men were absolutely insignificant compared to the fees paid now; and I consider that the great deterrent to litigation is the enormous cost caused by counsel's fees. I think the time has come when a stand ought to be taken against it. It only requires a few of us to combine and say we will not pay these ridiculous fees for the thing to tumble down like a house of cards. You all know that tale of the oyster where a lawyer is dividing the oyster and he says—

'A shell to you, and a shell to thee,
And the oyster is the lawyer's fee.'

I should like to paraphrase it—

'A shell to you, and a shell to thee,
And the oyster is the counsel's fee.'

The poor solicitor has for his remuneration merely the melancholy pleasure of seeing the other professional man swallow the luscious bivalve. But gentlemen, there is another thing, and that is the ridiculous disparity between taxed costs and solicitor and client costs. It does seem to me monstrous that a litigant who is successful should be mulcted in the enormous expense that he is now, and I think, especially in the case of a successful defendant who is forced into litigation, that there ought to be a practical indemnity against costs, except, of course, the costs incurred by over-caution or by extravagance.

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The Remuneration of Solicitors.

I come, gentlemen, to the way in which we solicitors have to make out our bills of costs. I think it is really a relic of barbarism. We have to make out bills by really charging for things we do not do in order to get remuneration for things we do, and the client hates that way of charging. He does not like to see a long bill of costs made up by attending counsel; attending paying his fee and clerk, (why we should pay his clerk the Lord only knows); 'Drawing up, despatching telegram to you;' 'Term fee'—which he never understands—and a long list of

ridiculous items of that kind. To show that I am not alone in the views I am expressing on this point, I should like to read a paragraph from the preface to 'Costs on the High Court Scale,' by Master King, one of the ablest of Taxing Masters. What the says is this—'Costs are a peculiarly British institution. No other country pays its lawyers in the same fashion, and in particular no other country has such an extraordinary difference in the mode of payment between the men who think and the men who talk, between the men whom suitors see and the men to whom judges listen. Nor is this distinction the only peculiarity in our mode of legal remuneration. Under it, through various causes, but principally from an inordinate application of the maxim, *via trita via tuta*, solicitors are largely dependent for their living upon allowances which are framed upon the paradoxical principle of paying them for things they don't do by way of compensation for not paying them for things they must do. That, gentlemen, is the opinion of Master King, and I cordially agree with it.

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Agreements with Clients.

I come to another thing. I have pointed out what I have considered the defects and I have pointed out the remedy, but why is it not possible in contentious matters to arrive at a different system? Why cannot we make agreements with our clients as to what we are going to charge them? In non-contentious matters you are clearly allowed to do it. The Solicitors Act of 1870, to my mind, said we should be allowed to do it in contentious matters, but there is a section in that Act which has given rise to a decision. Please understand that I am not now trying or intending in anywise to prejudge the question raised by Mr. Brinsley Harper and which we, at present, have under consideration. I am talking of the right to make agreements. It is said you can agree to charge, but you must not make your charge dependent upon success. In other words, as far as I can understand this very peculiar state of affairs, a London tradesman may say to you—'Mr. Samson or Mr. Jones, or whatever you like, I have got 500 debts to collect and they come to 5,000*l*. altogether. I will give you 5 per cent. on all those debts whether you collect them or not. But he cannot say to you —'I will remunerate you by giving you 5 per cent. on what you do collect.' Well, gentlemen, if that is the state of the law, it does seem to me a very peculiar condition of things. It has come to this, that you get paid for work you do not do, and do not bring actions for, but if you have to do a bit of work and bring an action, you cannot get paid for it at all. It may be the law, but it is not common

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HUMANIZING CRIMINAL LAW.[1]

In order to understand some of the differences between the criminal law of the past and present in relation to humanitarian feeling, a few facts in the history of crime in England will be given, which will illustrate how her criminal law has become more hnmane. What is true of England, is doubtless true of most countries.

In queen Elizabeth's time, there was a great decrease in capital punishment. It is asserted that in the reign of Henry VIII, nearly two thousand minor criminals were hanged annually; that in Elizabeth's time the number had fallen to about 400. While these figures are conjectural, it is probable that there were fewer executions and less crime at the end of the 16th century than at any previous time in English history.

When human blood was cheap, when it had a fixed price in cattle and money, it was not strange that a murderer could buy back his life, but a thief, too poor to make restitution, was hung. It was no greater crime to kill a person, than to pick his pocket. It was only in 1808, that a law was passed, by which pocket-picking ceased to be punished by death. It was as late as 1820 when the law was changed to the extent that it was no longer a capital offence to steal from a shop, unless to the value of 15 pounds. Until 1832, stealing of horses, cattle and sheep, stealing from dwelling houses and forgery were capital offences.

PUBLIC PUNISHMENTS.

It was a common sight to see a baker with a loaf of bread about his neck for dishonest dealing, being jeered and pelted in the pillory,

1. "Juvenile Crime and Reformation" (359 pp.) and its companion "Man and Abnormal Man" (780 pp.) are Senate documents and might be obtained either through any U. S. Senator of Representative. Also the "Superintendent of Documents" at the Government Printing Office, Washington, D. C, will send them on receipt of their prices (25 and 40 cents).

which was also used to punish those who sold bad meat, poultry, fish and false jewelry. Also those who were gamblers with loaded dice, beggars who had pretended to collect for a hospital, fortune-tellers who had promised to recover stolen goods and petty thieves of every kind. Sometimes there would be seen a woman on the ducking stool, to which she had been sentenced as a common scold. A hasty word was often punished by a dagger: a claim, whether right or wrong, was often enforced by a troop of armed men. The gibbet with a robber hanging in chains was a familiar object and the heads of traitors and heretics were exhibited on poles.

TORTURE.

In the past ages the people seemed to gloat over cruelties. The effects were brutalizing. The torture room was a recognised institution, and excited little or no public discontent. Not only were there most brutal punishments, as boiling alive, cutting off hands and arms, and the rack, when the public looked on with complacency, but even the judges took pleasure in the misfortunes of the accused, pronouncing sentence with blood thirsty exultation. The theory of torture was that a person accused, should if possible incriminate both himself and others, and the judges, who could not legally order the torture, could question and threaten any one arraigned. This prevalence of brutality, for long ages, confirms the teaching of history, that human beings are mainly what their forefathers were and that the difference between two consecutive generations is often very difficult to perceive.

MODERN METHODS OF REFORMING CRIMINALS.

The " humanizing of the criminal law " is not only shown in the history of crime, but is especially exemplified by modern methods of reforming criminals.

It is often asked what is the "cure" for crime, in implying the idea of some specific remedy. But it is doubtful if any such remedy would be possible. It would be like seeking a specific for general good health. The criminal element in man's nature radiates through the whole man, so that the remedy may be a question of general moral health, for which no specific is adequate. One main remedy is educational, consisting almost wholly in the early training of the young. Anything that tends to make them good citizens helps to prevent crime.

NEED OF MORAL EDUCATION.[1]

A general defect in education seems to be giving too much weight to the intellectual and rationalistic side of nature, and too little to moral impulses. This boy stole because he was ignorant; no, he stole because of his bad social or parental surroundings, which are also the cause of his ignorance, he not having means to obtain an education. Goethe says to liberalize the mind without giving one control of his character is bad.

One of the main objects of education is to eradicate, or at least modify or correct, unfavorable tendencies, in mind, will, and body, and to develop favorable ones. That is, one great purpose of all education should be moral; for an individual may be a good citizen with little knowledge if he has sound morality, but the reverse is not true. Any education or teaching which develops the mind without equally developing the moral impulses may become a dangerous education, for when the recipient goes wrong, he is a more astute enemy of society and can do more evil than a thousand citizens can do good. If, as some claim, we must emancipate the mind and liberalize the spirit, we must be all the more solicitous as to moral education; for the old religious ideals are almost inseparably connected with moral ideals, and an effort to separate them may be a reform in the wrong direction. Anti-religious intolerance is not only worse, but more injurious, than religious intolerance.

While moral or reformatory education is the most important, it is, strange to say, the most neglected. One of its purposes is to lessen or prevent crime, pauperism, and degeneracy by the teaching of mental, moral, and physical habits, especially to the young, that they may be better protected and prevented from going wrong.

There is a special difficulty in teaching even a minimum system of morality. For the desideratum consists not only in inculcating general principles, but by indicating courses of conduct in detail. Generalities elevate the moral tone, but details incarnate the principles.

SOME CHILDREN DIFFICULT TO REFORM.

In vicious and criminal children the cause of their degeneracy can often be traced to hereditary antecedents, yet in some cases careful but severe treatment will save them, where otherwise their

1. See adress on "Moral Education" (by author) before the "Mary Washington Chapter" of the Daughters of the American Revolution, published (inFrench) in "La Revue Internationale del' Enseignement, 15 Aôut, 1908. Paris.

bad instincts would lead them to destruction. If, however, such treatment, through neglect of parents or others, be delayed until the child is somewhat grown, it will in most instances fail, for criminal taint has had opportunity to develop and permeate the character. Such a child is morally frail, with little power of resistance and liable to fall in the least temptation. A few seem to have a sort of blindness and want of comprehension, being absolutely under the sway of their instincts and impulses. For these there is little hope. They have niether pride nor fear; they lie with audacity attributing to others what they have done themselves. Some of them are chiefs of little bands, often well organized to steal. They have all the the vices, which they avow with revolting cynicism. They seem also to have an instinctive appetite for alcoholic drinks.

True it is there are boys, and ever will be, who will not escape the penitentiary despite all the advice, precept, and good training you may shower on them. This class, however, comprises a very small per cent. of the whole, when we consider the large number of the decent, respectable, law-abiding young men who graduate from industrial schools and who have taken their place alongside the busy workers of the world, proving themselves good citizens, making an an honest living, and leading exemplary lives.

The so-called "bad boy" is not half so bad as his reputation. The greatest fault with him is that he is misunderstood because he has been neglected; he has gradually developed from bad to worse until at last he is in the clutch of the law. Then it is he is given up for lost, and oftentime thrown in jail with vile, vicious, unlawful men who delight to further aid his downward course.

Boys who are not criminals, but the victims of circumstance, who have broken the law between the ages of 8 and 16, should never be placed in jail on a common basis with common prisoners. They should not be punished, but educated. Experience proves that they quickly respond to kind treatment and home-like influence. It is to this end the industrial school was established.

CRITICAL AGE.

It has been found in France that, from 12 to 14, boys are most frequently sent to reformatories, and girls from 14 to 15 years of age. The ages of 12 for the boys and 14 for the girls are critical. This is the time when the children of the poor seek employment, escaping the control of the school, without coming back under the charge of the parents. At this age, also, passions begin to develop and youth becomes an easy prey to the temptations of the street.

Thus the school is, itself, a safeguard as long as the child attends it, but it also seems to indicate that the school is incapable of arming the pupil against the temptations of life when he has ceased to attend.

Pascal called the child a little impulsive being, who is pushed indifferently toward good or evil, according to the influences which surround him. Like soft clay, of whatever form, it cannot resist the hand of the potter.

DEFECTIVE HOME LIFE.

There are parents who are unworthy and others incapable or negligent. There are mothers and fathers, who by their conduct or bad treatment, put their children in peril. These are mostly drunkards.

The family ties are weakened by death of both or one of the parents, by disease and by poverty. Against these little or nothing can be done.

The movement of the people from the country to the city and the floating character of the population tend, with the loss of native ground, to lessen family sentiment. The unhealthy, promiscuous conditions surrounding tenement houses, the insufficiency of woman's wages, the deplored condition of the young girl in the lower classes, cause a disintegration of the family life.

Then the numerous clubs, both women's and men's mean so much time taken from the family life. The increase of divorces, of which the children are innocent victims, the second marriages, often inspired by egotism and selfishness these make family life a mere name.

Formerly the father went to work alone and the mother remained at home to attend to her household duties and look after the training of the children. Now the wife goes out with her husband, leaving the children at home alone or in the charge of other people. Formerly the father came home early from work and greeted his children, adding to the influence of the mother by firmness and kindness. Now the father may return late, or only to remain a short time, and then goes to the saloon, or to fulfil some so-called political duties.

UNFORTUNATE SCHOOL CHILDREN.

It is said that many children attending school are in want of food; some come without breakfast because the parents do not get it for them; as a little boy said, " his mother got drunk and could not

get up to get it." Such children are very irregular in attendance, which is a great annoyance to a teacher, not to say a waste of public money. Such children live in the poorest neighbourhood ; they have no regular meals; fully a third live in one room with their parents ; their waking hours are divided between school and the street; saloons are sometimes as numerous as one to every hundred adults ; those on the verge of pauperism patronize them. Yet there is good order in these schools ; the street urchins are trained to respond to right rule affording ground for hope as to their future. At home they have no training; they need encouragement; they should be lifted up from their surroundings and gain a better taste for things. The difficulty is caused more frequently by poverty and shiftlessness at home than by neglect and vice, yet the latter have great influence. Compulsion in its ordinary form is practically useless in making such children regular in attendance at school. The parents are characterized by improvidence, want of purpose, and no regard for the future of their children; as soon as their boy is through with school he is put on work which prepares him for nothing, and thus he drifts into casual employment, trusts to chance for a living, and gradually sinks. The poverty, misery, and vice of the next generation will to a large extent come from the slum children. Their need is education in habits of decency, cleanliness, self-respect, the rudiments of civilization and domestic life; their instruction should not be too abstract, nor technical in the sense of fitting them for competitive examinations, clerkships, or college: but rather for the workshop, factory, trades or the home.

CHILDREN SHOULD BE CARED FOR.

There is apprehension that the excellent equipment of modern reformatories and industrial school, such as electric lights, bathroom most improved methods of heating, free medical service, free dentistry, excellent teaching, lectures, entertainments, the best of food, many comforts the poor would call luxuries, solid buildings, elegant situation, fine scenery, superb cottages approximating to a refined country home—that the providing of these and many other advantages for the young who have gone wrong may take away that wholesome fear of jail or prison, which doubtless keeps many a youth from committing crime; that all such comforts should be provided by the State for its enemies may make the idea of crime much less abhorrent and thereby tend to increase it among the young.

Let it be admitted that such treatment of wayward youth does sometimes lessen the wholesome fear of prison. It may be remarked that allowing the young to be arrested and remain in jail a few days

will lessen such fear much more and have a damaging effect upon the youth forever after, if not preparing him for a criminal career.

But the state allows children born in unhealthy surroundings to remain in them, and until they break the law they are not considered subjects for reform. The state should give the young a chance, and the industrial school and reformatory, with all their elaborate equipment, are for this purpose.

REFORMATORY DISCIPLINE.

It is almost a truism of discipline in a reformatory, that the conditions inside should approach those outside as near as possible, so that on the prisoner's release the change may not be so sudden as to precipitate his early fall. He probably becomes an evil doer gradually, and if he becomes a good citizen the change must be as gradual. The importance of the application of the individual method is evident here. It seems rational that one in charge of a penal or reformatory institution should know at least the important details as to the character and life of every individual under his charge. The practical value (not to mention the scientific value) is obvious. This applies as well to all the under officers, who are much more in contact with the men. We say it seems rational, if the men are to have intelligent and proper treatment.

One trouble, as in other institutions, is the want of thoroughly trained men. It is as true of a prison as of a university that buildings do not make it, but men. The public, however, are unwilling to pay for trained men. Even the wardenship of a prison is not regarded as a very high political office, nor are intellectual qualifications a conspicuous requisition. The regular duties of a warden (not to mention his political ones) leave him little time and less energy to make an individual study of his prisoners, and too many of the under officers are incapable from lack of education or intelligence, or both. Some of the criminal are more intelligent than their keepers, whom they are admonished to respect.

CHILDREN HAVE POSITIVE RIGHTS.

Every child has the right to a proper bringing up. If it have no parents or its parents cannot give it the rearing it has a right to, the community or the State should do it. If its parents are unfit or unable or indifferent as to its welfare. the child is certainly not to blame and the State should see that it has a chance in the struggle for existence. Such a child at best will have enough disadvantage, when helped by the State, as compared with the child who has good parents. The fact that some parents would be encouraged to neglect

their children if the State undertook to see that children are properly cared for is no reason why the children should suffer. Parents who care so little for their children as practically to give them up are parents whom the children might as well be without. That there are many children in any community who have improper homes is a fact too well known. Almost any policeman can tell you of parents with whom it is detrimental for the children to live. As those children are to be future citizens, it is incumbent upon the State to see that they have at least a chance to become good citizens.

LABORATORY METHODS OF STUDY.

The modern methods of reforming criminals, which we have referred to briefly, are not only of great importance, but have proved successful in restoring to the community many who have become useful citizens. Yet after all has been said, these methods are more or less palliative. They really do not go to the root of the matter. They are the best we have been able to do up to the present time.

As in science, the laboratory method of study is the most fundamental, so in criminology it is equally necessary, if trustworthy knowledge and permanent results are to be obtained. If sociology and criminology are to become sciences in the rigid sense the direct road thereto is the laboratory method.

Large sums of money are being contributed for palliative measures, yet crime and pauperism are increasing in proportion to the population, showing that such measures (almost the only ones) are not adequate. It is not intended here to criticise in the least any efforts to alleviate suffering, but such alleviation is usually temporary and may even increase the disease. Investigation of causes is therefore imperative, and this cannot be done without scientific study of the individuals themselves.

The term laboratory is used in the broadest sense. Thus studying a criminal in his cell mentally, morally and physically, and with instruments of precision, constitutes a laboratory.

It is a curious circumstance that the study of the criminal himself has been almost entirely neglected; and this is the reason we know so little about the real causes of crime, how much is due to environment and how much to the nature of the criminal; also, just

1. For some results of laboratory work (by writer) see "Defects of Development in Children," published (in German) in Jahrbuch fur Kinderheikunde, Berlin, 1910; "Circumference of Head, Cephalie Index," etc., "in Relation to Mental Ability and Sociologic Condition," etc., in Journal of the American Statistical Association, Boston, December, 1911; also "Man and Abnormal Man."

how—by what steps and processes—does environment or inward nature, or both, lead to criminal acts. The lawyer studies books, but not the criminal. We say this is strange, for in medicine the physician always studies the individual who is sick, in order to treat him properly.

THE REFORMATORY, A LABORATORY.

Since at least a majority of the inmates of a reformatory are normal, their crime being due rather to their unfortunate surrounding than to their inward natures, and since abnormal persons—that is, those positively abnormal in at least a few respects—are nevertheless normal in most things, whatever therefore may be found true of the inmates may be true to a large extent of all young persons brought up in similar conditions of life.

Thus the study of the inmates of a reformatory and the results of such investigation can be of use to the whole community, at whose expense the reformatory is supported. It is therefore not unjust or unreasonable to make the reformatory a humanitarian aboratory for purposes of study, provided no injury be done to the nmates.

As an illustration of this method of inquiry the following plan to study 2,000 boys in reformatories, may give a more definite idea of such investigation. It would consist in a physical, mental, moral and social study of each boy, including such data as age, date of birth, height, weight, sitting height, color of hair, eyes, skin, first-born, second-born or later born, strength of hand grasp left handed length, width and circumference of head, distance between zygomatic arches, corners of eyes, length and width of ears, hands and mouth thickness of lips, measurements of sensibility to heat and pain, examination of lungs, eyes, pulse and respiration, nationality, occupation, education and social condition of parents, whether one or both are dead or drunkards, step-children or not, hereditary taint, stigmata of degeneration. All data gathered by the institutions as to history and conduct of inmates might be utilized.

Just as every State employs a health officer, not only to stop but to prevent disease, so the State should make provision for preventing crime by employment of the best methods known to science and sociology.

EDUCATIONAL METHODS CAN BE STUDIED.

As has been stated, the inmates of institutions for the delinquent differ little from individuals outside. The excellences and defects of

an educational system can be carefully studied in these institutions, for all are under the same conditions and can be controlled in all details of their life. Here is an opportunity for the rational method of treatment, which is, first, to study the unfavorable characteristics, and, second, to investigate their causes as far as possible. Knowledge thus gained will be the most reliable in correcting evil tendencies or preventing their development. By such a method no sudden results should be expected; gradual progress is all that can be hoped for. A thorough study of this nature in penal and reformatory institutions is possible; the effects of the method of education can be closely observed physically, intellectually, and morally. Thus, when, for instance, an inmate ceases to reverse his drinking cup after using it, which is required for purposes of cleanliness and order, this, though a very slight thing in itself, indicates, that he is becoming careless and losing his will power to reform. By a sort of radiation other negligences are liable to follow, confirming the direction in which he is tending. A good report from his keeper, on the other hand, can signify a new resolution of the will. Thus a series of records indicate, so to speak, the moral and intellectual pulse of the inmate. What might seem a very slight offence outside of a reformatory institution is not so within, where there is a minimum of temptation to do wrong and a maximum of encouragement to do right, so that there may be a gradual education in the formation of good habits, which are the surest safeguard to the inmate after his release.

Arthur Mac Donald,
Washington D. C. Author of "Juvenile Crime and Reformation."

NOTES OF INDIAN CASES.

Sm. Khettermoni Dassi *v.* Sm. Kadambani Dassi.—16 C. W. N. 964.—A curious question of Hindu Law was raised in this case. The contention was that a widow although chaste would be disentitled to inherit if she had refused to go to her husband's house. This contention was based upon reading the term पत्नी in the text of Yagnavalkya II §§ 136, 137 as synonymous with साध्वी which is defined in Manu Chapter V. § 165 thus: "She who, controlling her thoughts, words, and deeds, never slights her lord, resides (after death) with her husband (in heaven) and is called a virtuous wife .(Sadhvi)." As pointed out by Mr. Justice Chaudhuri this is a mere direction for regulating one's life and cannot be imported into the region of law so as to add to the dis-

qualifications and restrictions imposed by text writers especially the commentators and digest writers upon females and their rights.

King Emperor *v.* Sheik Idoo.—16 C. W. N. 983.—A *nolle prosequi* entered by the Advocate-General before the High Court does not amount to an acquittal unless the presiding judge otherwise directs. See S. 333 Cr.P.C. It only operates as a stay of the prosecution and the accused is only discharged and not acquitted. This is the simple principle apparently laid down in this case.

Shamu Patter *v.* Abdul Kader 23 M. L. J. 321 (P.C.); s.c. 16 C. W. N. 1009.—The Judicial Committee in this case affirmed the judgment of the Madras High Court in the case reported in I. L. R. 31 M. 215. The question in this case was as to the meaning of the word "attested" in S. 59 of the Transfer of Property Act. The High Court held that a person who did not witness the actual execution of the document could not be said to have attested it within the meaning of this section. As observed by their Lordships the question is one of considerable importance as notwithstanding the decision in I. L. R. 31 M. 215 persons in this Presidency proceeded in accepting documents upon the view that a person might properly be regarded as an attesting witness if he witnesses it upon the personal acknowledgment of execution by the executant. After the decision in I. L. R. 31 M. 315, we know of the institution of a number of suits in which documents have been sought to be invalidated on the ground of improper attestation as held in I. L. R. 31 M. 215. Although there may be no hardship in the case of documents executed after the decision in I. L. R. 31 M. 215, by adhering to the view therein laid down the hardship in the case of documents which came into existence before is serious. After the decision of the Judicial Committee there is no use considering the arguments for the opposite view and the hardship to the public who rely upon documents which came into existence prior to the decision in I. L. R. 31 M. 215, can only be remedied by the Legislature.

Benod Behari Bhadra *v.* Ram Sarup Chamar.—16 C. W. N. 1015.—We have some doubts as to the correctness of this decision. The learned judges held that although under S. 6 clause 6 of the General Clauses Act the right of appeal to which a suitor had in the matter they were discussing (*viz.*, an order passed on an application to set aside an execution sale on the ground of fraud) was preserved that right was taken away by S.

154. S. 154 however is expressed negatively. All that it states is that it does not take away any present right of appeal which should have accrued to any party at the time of commencement of the Act. This section has been framed more by way of caution and cannot by itself be construed as taking away vested rights. Whether particular provisions of the new Code of Civil Procedure are retrospective in operation will depend not upon S. 154 but upon the provisions in the new enactment expressly dealing with such right. Even in such a case S. 154 states that it shall not affect any present right of appeal. Under the circumstances we cannot agree with the view of the learned judges that the provisions of S. 6 Cl. 6 of the General Clauses Act do not apply. Again in the particular case we find it is an order of remand and from this order of remand an appeal is expressly provided for by O. 43 r. 1 (a).

Sashi Bhusan Lahiri *v.* **Rajendra Nath Joardar.**—16 C. W. N. 1094.—In this case the Calcutta High Court held that according to Dayabhaga a step-sister's son is with respect to a woman's stridhanam a preferential heir to the daughter's son of the great grand-son of the great grand-father of the woman's husband. It does not appear from the report what the nature of the stridhanam was the succession to which was in question in the case. The learned judges refer to an earlier case in *Dasarathi Kundu* v. *Bepin Behari Kundu.*[1] There also the nature of the woman's stridhanam does not appear from the report. The decision proceeded upon the view that the husband's elder brother could succeed only after the sister's son and the sister's son mentioned in the Brihaspati's text cited in placitum 31 will include the son of the sister of the whole blood and the son of the half sister. We have some doubts as to the construction to be placed upon placita 30 to 41 and the scope of the rules therein laid down. We think that placita 30 and 31 are a commentary to placita 29 and that the succession laid down in default of heirs down to the husband refers only to what is called the sister's fee which, according to the texts of Gautama and Katyayana goes in the first instance to uterine brothers,in their default to the mother and in default to the father. *Dasarathi Kundu* v. *Bepin Behari Kundu*[1]. The author of the Dayabhaga says that according to some the father succeeds before the mother but that is not his opinion. The nature of the woman's fee is discussed in placita 19 to 32. Placitum 32 and those which succeed it follow placitum 31 and are more or less a comment on the rule laid down in that placitum. We

1. (1904) I. L. R. 32 C. 261.

do not think there is any justification for taking the rules as to the order of succession laid down in placita 39 and 41 as applicable to other kinds of woman's property. It is unreasonable to suppose that the husband's younger brother whose title to succeed is expressly based upon the principle of religious efficacy and whose claims cannot therefore be superior to those of the husband's elder brother, and the son of the elder or younger brother whose title is also based upon the principle of religious efficacy and whose title is certainly therefore inferior to that of the husband's younger brother should both be allowed to take only in default of all the heirs mentioned in Brihaspathi's text cited in placitum 31. Of course even taking the rule to be applicable to the case of Sulka the unreasonableness does not disappear but such a rule can only be supported on the ground of express authority. We do not see what express authority there is in the case of succession to a woman's property which is not her fee. In the order of succession given in Sircar's Translation of the Dayatatwa, however, a different view has been taken. It may be mentioned that the Bengal authorities are in conflict with one another with reference to succession to Stridhan property.

SUMMARY OF ENGLISH CASES.

Bartlett v. Parker. [1912] 2 K. B. 497.

Gaming—Lottery—Gift of prize—Purchase of chance—Purchase money not used for prize.

In this case the respondents were charged before the justices with selling tickets in a lottery contrary to the provisions of the Lotteries Act and for publishing a scheme for the sale of tickets in the lottery. A number of tickets bearing different numbers were sold on condition that the owner of a ticket bearing a number to be drawn subsequently by an independent person should be entitled to a prize. The prize was a bicycle presented by a firm of manufacturers for the purpose of advertisement. No part of the ticket money was used for the prize. It was contended that no offence was committed as the prize was given by a 3rd person and that the bicycle was not purchased with any money contributed by the purchasers. The justices dsimissed the information. On appeal *held* as each purchase of the ticket bought a chance and the winner was determined by chance, the scheme was an offence *under the Lotteries* act.

In re a **Debtor.** [1912] 2 K. B. 533.

Bankruptcy Act—Non-compliance with notice to pay debt—Bankruptcy of creditor—Notice—Subsequent adjudication of judgment creditor—Relation back of trustee's title.

A judgment-debtor was served with a bankruptcy notice by his judgment-creditor to pay the amount of the debt due to him. Prior to notice the judgment-creditor had committed an act of bankruptcy and a trustee was appointed on adjudication. *Held* that the judgment-creditor was not entitled to issue and serve a bankruptcy notice and the receiving order must be discharged.

In re **Miller:** *Ex parte* **Furniture and Fine arts depositories Ltd.** [1912] 3 K. B. (C. A.)

Bankruptcy—Practice—No order for payment by instalments—Part payment into court—Bankruptcy notice for the full amount—Execution—Validity.

Where judgment was obtained for the full amount due and before the day fixed for the payment of the decretal amount the judgment-debtor paid a portion of the amount into court and the creditors repudiating the payment issued bankruptcy notice for the full amount. *Held* by the court of appeal, that the execution could not issue for the whole amount but only for the balance after giving credit for the amount deposited in court and that the bankruptcy notice was invalid.

In re **Hart:** *Exparte* **Green.** [1912] 3 K. B. 6.

Bankruptcy—Voluntary settlement—Sale by donee after act of bankruptcy—Settlor—Purchases for value without notice—Title of trustee.

A purchaser for value of property which his vendor had derived from the bankrupt under a voluntary settlement has a good title against the trustee in bankruptcy although the transaction took place after the commission by the bankrupt of an act of bankruptcy and therefore after the accrual of the trustee's title if the purchaser had not any notice of the commission of the act of bankruptcy.

Rex v. **Thomson.** [1912] 3 K. B. 19.

Criminal Law—Evidence—Charge of illegal operation upon a woman—Statements of deceased made before and after miscarriage—Admissibility.

All the trial of a person on a charge of having used an instrment upon a woman to procure miscarriage and the defence was that the woman had performed an operation on herself and that he had nothing to do with her. Counsel for the defence was not allowed in cross-examination to put questions to a witness as to what the deceased said before and after the miscarriage. The judge refused to permit the question. On appeal it was contended that any thing must be admissible in evidence which will help the accused to prove his defence. *Held* overruling the contention that such statements were not admissible as hearsay.

JOTTINGS AND CUTTINGS.

Benches of Magistrates in the Muffassal and their powers : Notification, G. O. No. 1628 Judicial dated 8—10—1912.— In exercise of the powers conferred by Ss. 14, 15 and 16 of the Code of Criminal Procedure, 1898, and in supersession of all previous notifications on the subject, the Governor in council is pleased to issue the following orders regarding Benches of Magistrates in the mufassal; provided that nothing herein contained shall affect in any way the Benches of Magistrates at Ootacamund in the Nilgiri district and at Cochin in the Malabar district which shall continue to be guided by the rules hitherto in force :—

1. One or more special magistrates appointed for any local area may sit as a Bench, together with any salaried magistrate whom the District Magistrate shall from time to time nominate for that purpose. The salaried magistrate shall be the Chairman ofthe Bench so constituted and the Bench is hereby invested with the powers of a magistrate of the third class or such higher powers as are exercisable under the provisions of sub-section (2) of S. 15 of the Code of Criminal Procedure, 1898—

(1) to try summarily offences under the Indian Penal Code, Ss. 277, 278, 279, 285, 286, 289, 290, 323, 334, 336, 341, 352, 426 and 447 ;

(2) to try summarily offences under Municipal Acts and the conservancy clauses of Police Acts, punishable only with fine or with imprisonment for a term not exceeding one month ;

(3) to try summarily abetments of any of the foregoing offences;

(4) to try summarily attempts to commit any of the foregoing offences when such attempts are offences ;

(5) to try, in accordance with Chapter XX of the Code of Criminal Procedure, 1898, offences punishable under—

(*a*) sub-section (2) and (3) of S. 112 of the Madras Local Boards Act, 1884;

(*b*) S. 18 of the Madras Registration of Births and Deaths Act, 1899;

(*c*) S. 5, 6 and 7 of the Madras Towns Nuisances Act, 1889;

(*d*) The Madras Hackney Carriage Act, 1911.

Provided that no Bench of Magistrates shall try offences under Ss. 426 and 447, Indian Penal Code, including abetments of, and attempts to commit, such offences, except with the special sanction of Government.

Provided also that, with the approval of the District Magistrate, any three or more special magistrates, of whom one is specially designated by the District Magistrate, may sit together as a Bench and shall exercise the powers of a magistrate of the third class in respect of the offences specified above other than those referred to in the first proviso.

2. The magistrate specially designated by the District Magistrate shall, if no salaried magistrate is present, be chairman of such Bench.

3. All existing rules made by District Magistrates for the guidance of Benches in their several districts as to the times and places of sitting shall continue in force until modified or withdrawn.

4. Differences of opinion shall be settled by the votes of the majority of the magistrates present, the chairman having the casting vote.

5. If any person charged with any of the offences specified above is arrested without warrant and has not been released on bail he shall be produced for trial before the salaried magistrate having jurisdiction. If such person has been released on bail or if process to compel his appearance is issued by the salaried magistrate having jurisdiction, the bail-bond or the process shall require him to appear in accordance with its terms before the Bench of Magistrates having jurisdiction. The District Magistrate or the Sub-Divisional Magistrate shall exercise the same powers in regard to withdrawal or reference of cases from Benches as he possesses in the case of magistrates under S. 528 of the Code of Criminal Procedure.

6. Under S. 265 of the Code of Criminal Procedure, every Bench of Magistrates is authorised to prepare the record or judgment

of the Bench by means of any officer appointed by the Sub-Divisional Magistrate.

7. Under S. 260 of the said Code every Bench of Magistrates exercising first-class powers is hereby invested with power to try summarily any or all of the offences specified in that section, and every Bench of Magistrates exercising powers of the first or second class is hereby empowered to try summarily all or any of the offences specified in clauses (1) and (2) of rule 1 *supra*.

8. The Governor in Council is pleased to direct that the term of office of honorary magistrates shall be five years.

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Judicial Staff in England:—The *Globe* asked a pertinent question last month. Do people realise how small, having regard to its population and wealth, the judicial staff of England is? The number of salaried judges, including County Court judges, recorders, and stipendiary magistrates, is less than 300. Switzerland, Denmark, and Norway are the only countries with a smaller number of paid administrators of the law; Germany is blessed with over 8,186 judges, France with 7,803.—Austria with 4,541, Italy with 3,645, Russia with 3,180, Hungary with 2,658, Belgium with 546, Sweden with 497, and Holland with 338.—*Law Notes*.

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Perjury in Divorce Court. Perjury is still too common in the Courts, particularly in the Divorce Court. "A co-respondent who would not support the respondent in her denials of guilt must be so paltry a creature," Mr. Justice Butt is reported to have once observed, "that I would not believe him on his oath." But though complaints of perjury are many, prosecutions for the offence are very few. The report of the Public Prosecutor shows that in 1911 he undertook the prosecution of only seventeen persons accused of the crime. Nor are the results of these seventeen cases exactly calculated to strike terror into the heart of the untruthful witness. Only eight persons were sent to prison, the sentences ranging from twelve months' imprisonment to three weeks. The number of prosecutions is surprisingly low, particularly when it is remembered that nearly all prisoners nowadays, the guilty as well as the innocent, give evidence on their own behalf. —*Ibid*.

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Married Women and Relief against restraint upon anticipation. One day, last sittings, in the course of an application to sanction a disposition of property by a married woman notwithstanding a

restraint against anticipation, Mr. Justice Eve delivered himself of rather strong remarks on the subject of such applications. "I do not think," he is reported to have said, "there is a more dishonest class than married women who come here and ask for relief from restraint upon anticipation. I have granted relief time after time, only to find they have told a pack of lies. They come into Court apparently in the last throes of distress, as though their hearts would break or they were on the point of suicide if the Court did not relieve them from the consequences of their own extravagant folly."—*Ibid.*

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The Lord Chancellors. A writer in the *Globe* gives some interesting particulars of the parentage of modern Lord Chancellors. The present Lord Chancellor's father was a Writer to the Signet. There have been five other occupants of the Woolsack since the beginning of the nineteenth century whose fathers were lawyers. Lord Wedderburn was the son of a Scottish advocate; Lord Cottenham was the son of a Master in Chancery; Lord Truro was the son of a solicitor; Lord Halsbury is the son of a member of the Bar: Lord Loreburn is the son of a Colonial judge. An examination of the pedigrees of the Lord Chancellors for the past 112 years shows, indeed, that a lawyer is more likely to enjoy the proud distinction of beholding his son on the Woolsack than any other type of professional man.

A Minister of religion, after a lawyer would appear to have the greatest chance of becoming the proud parent of an occupant of the Woolsack. Four Lord Chancellors have come of ecclesiastical stock. Lord Cranworth was reared in a Norfolk rectory; Lord Campbell's father was a Scottish divine: Lord Selborne, who was, perhaps, the most ecclesiastical of all modern lawyers, was the son of an Oxfordshire rector; Lord Herschell's father was a Dissenting minister. Of the other nine Lord Chancellors who have occupied the Woolsack during the past 112 years, Lord Eldon's father was a newcastle "coal fitter," Lord Erskine's was a Scottish peer, Lord Lyndhurst's was a famous painter, Lord Brougham's was a small North country landowner, Lord St. Leonards' was a hairdresser, Lord Chelmsford's was an English peer, Lord Westbury's, was a Bristol doctor, Lord Cairns' was a captain in the Army, and Lord Hatherley's was a Lord Mayor of London.—*Ibid.*

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Mr. Justice Darling will probably never surpass his witticism in the "potted opera" case. A question arose whether a certain

singer was competent. "Well, he could not sing like the archangel Gabriel," a witness had said, in reply to Mr. Duke, K. C. "I have never heard the archangel Gabriel," commented the eminent counsel. "That, Mr. Duke, is a pleasure to come," said his Lordship.—*Ibid.*

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John Clerk, the great Scotch Lawyer:— Stories of John Clerk, the great Scotch lawyer, are always cropping up. Clerk was counsel in an important property cause, and in the course of his speech he used the Scotch word "enow" for enough. The Lord Chanceller dryly remarked. 'Mr. Clerk, in England we sound the 'ough' as 'uff'—'enuff,' not 'enow.'" "Vera weel, my Lord," said Clerk, "of this we have said 'enuff,' and I come, my Lord, to the sub-division of the land in dispute, it was apportioned into what in England would be called 'pluff' land, a 'pluff' land being as much as a 'pluff' man can 'pluff' in one day." This happy repartee constrained the Chancellor to say in goodhumoured apology—"Proceed, Mr. Clerk, I know enow of Scotch to understand your argument."—*Ibid.*

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Here's another. Two Edinburgh girls passing John Clerk in the street, one said to the other, "That's John Clerk, the lame lawyer." "Madam," Clerk called out after her, "I am not a lame lawyer, I am a lame man."—*Ibid.*

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This from the "States." "I suppose you have tried motoring, judge?" asked the young man. "No, I have not," replied the judge, "but I've tried a lot of people who have."—*Ibid.*

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AN ADVOCATE FEARLESS AND BOLD.

X was a barrister ready and bright,
Good in his chambers, good in a fight.
But, discontented, he said, "I want fame,
What shall I do, then, to earn me a name?"
Quick came the thought, "I will try length of speech,
And stick to my guns like a true legal leech."
Having a case then to argue one day,
He spoke for six hours without sign of decay;
Three days he continued for twenty hours more,
He finished his facts, then dealt with the law.
The end of his case was not very happy,
For the judge on the fourth day became somewhat snappy
Which forced him to stop, and his lordship derided

His arguments lengthy, and against him decided.
But his object was gained, his name was now known
For the Press him exalted, and said he had shown
That he was an advocate fearless and bold,
Whose clients would never be left in the cold.
So now he is famous and earning large fees,
And he talks and he talks and everyone sees
That because of the length of his speech he must be
An advocate good as one ever shall see.

—*Green Bag.*

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Very Tough—A person should be quite sure of his facts before he broaches a theory; that is, unless he has the impudence of the Frenchman or the wit of Lord Mansfield. The Frenchman, on being told that the facts contradicted a theory which he had rashly put forth, exclaimed, with frank impudence :—

" The facts contradict my theory? Then so much the worse for the facts."

On a trial before Lord Mansfield, a witness named Elm gave his evidence with remarkable clearness, although he was more than eighty years of age. Surprised at the old man's mentality, his lordship examined him as to his habits of living, and found that he had throughout life been an early riser and a very temperate man.

" I have always observed," said the Chief Justice in an approving tone, " that without temperance and good habits, longevity is never attained."

The next witness, an elder brother of the early riser, also surprised his lordship in the clearness of the evidence he gave.

" I suppose," said Lord Mansfield, " that you also are an early riser."

" No, my lord," answered the veteran frankly. " I like my bed at all times, and especially in the morning."

" Ah, but like your brother, you are no doubt a temperate man?" asked the judge, anxious for the fate of his theory.

" My lord," replied this ancient Elm, who lived in an age when drinking was a fashionable vice, " I am a very old man, and my memory is as clear as a bell, but I can't remember when I've gone to bed wholly sober."

Lord Mansfield was silent.

"Ah, my lord," exclaimed Dunning, a lawyer, "this old man's case supports a theory upheld by many persons, that habitual intemperance is favorable to longevity."

"No, no," said the Chief Justice, with a smile. "This old man and his brother merely teach us what every carpenter knows—that Elm, whether it be wet or dry, is a very tough wood.' —*The Green Bag.*

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A HINT FROM THE BENCH.

A New York lawyer not long ago encountered a Tartar in the shape of an irascible witness who resented in no uncertain way the manner in which he was being cross-examined by the lawyer.

Finally, when counsel put to the witness certain questions that seemed to the latter to reflect upon his personal character, the irritated man on the stand burst forth with:—

"If you ask me that again, I'll give you a thump on the nose."

Immediately counsel appealed to the court, pointing out that an answer was necessary to the proper conduct of the cross-examination, and concluding with the inquiry:—

"What would your Honor advise me to do?"

"If you are determined to put that question," said the judge, "I should advise you to move a little from the witness."—*Ibid.*

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Judges and Popularity.—THE desire of the King's Bench Judges to see their numbers increased, so that they may administer the law with becoming expedition, seems to have produced the ill-conceived notion, especially among the Labour section of the political world, that the Bench ought to make itself more popular. The judiciary has always to some extent reflected the characteristics of its age, and it is impossible for it to be wholly unaffected by the democratic forces of the times in which we live, but nothing could be more alien to its dignity and usefulness than the notion that popularity must be one of its attributes. How disastrous to the proper administration of justice would be a popularity-hunting Bench has always been recognised. 'A popular judge,' said Bacon, 'is a deformed thing; and plaudits are fitter for players than for magistrates. Do good to the people; love them, and give them justice; but let it be as the Psalm says, "nihil inde expectantes," looking for nothing, neither praise nor profit.' More than a century later, in one of the most famous of English trials, one of the greatest of

English judges expressed the same lofty disregard of mere popularity. These are the noble words of Lord Mansfield at the trial of John Wilkes:—

I honour the King and respect the people; but many things acquired by the favour of either are, in my account, objects not worth ambition. I wish popularity, but it is that popularity which follows; not that which is run after. It is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong upon this occasion to gain the huzzas of thousands, or the daily praises of all the papers which come from the press; I will not avoid doing that I think is right, though it should draw on me the whole artillery of libels, all that falsehood and malice can invent, or the credulity of a deluded populace can swallow.

This has always been the dignified attitude of the Bench, though never, perhaps, has it been expressed in terms so impressive. To take a later instance from the annals of the Bench, a murmur of applause once came from the jury box while Mr. Justice Cresswell was addressing its occupants. 'Gentlemen,' the learned judge observed, 'you will forgive me. I daresay you meant it very kindly; but believe me, the administration of justice is in great danger when applause in court becomes grateful to a judge's ears.' Here, again, the judicial note of succeeding ages rings true. Time was when it was the duty of the Bench to resist the pretensions of autocratic Kings. In our day it no less its duty to withstand, so far as justice and its functions allow, the bureaucratic methods of fleeting majorities. The worst thing that befall the judges, either for their personal dignity or the public welfare, is that they should seek to become popular, or pursue any ideal other than the calm fulfilment of their oath to do justice 'without fear or favour.'—*The Law Journal.*

* * *

The Judicial Committee:—Lord Rosebery once described the Judicial Committee of the Privy Council as a 'golden link of Empire.' It is a link which is growing stronger. The Committee resumed its sittings on Tuesday with no fewer than sixty-seven appeals in its list. For some considerable time Colonial and Indian litigants have made an increasing use of their right to bring their disputes to the Privy Council. During the past ten years the number of appeals entered has risen from 98 to 142. But never has the Imperial Court of Appeal commenced its sittings with a list so heavy as the present one. We have it on the authority of Lord Haldane that a traveller who had penetrated into a remote part of India found the natives offering up a sacrifice to a far-off but all-powerful god who had just restored to the tribe the land which the Government of the day had taken from it. He asked the name of the god. 'We know nothing of him,' was the reply, ''except that he is a good god, and that his

name is the Judicial Committee of the Privy Council.' This confidence in the Judicial Committee shows no sign of declining. Forty-three of the sixty-seven appeals in the list, counting all the consolidated appeals as separate cases, are from the Indian Courts. Of the twenty-four Colonial cases in the list, Canada, it is interesting to notice, supplies elven, the Straits Settlements six, and Australia and Ceylon two each, the remaining three coming from the Gold Coast, Gibraltar, and China. These figures, notwithstanding the absence of both South Africa and New Zealand from the list, indicate the increasing value which the King's dominions beyond the seas set upon the right of appeal to the Judicial Committee, and afford a further proof of the important part which that tribunal plays in the unity of the Empire. Access to the Imperial Court of Appeal, unlike that to most of the English Courts, is, happily, unobstructed by arrears. Only five of the sixty-seven appeals were set down for hearing before July. All that is wanted to make it more worthy of the great part it plays as one of the bonds of Empire is that its authority should be enhanced by an increase in its members. It is not fitting that an Indian appeal, for instance, should be determined by three Law Lords, not one of whom can claim to possess any expert knowledge of Indian law. The interests of the Empire require that the Government should proceed without further delay with their project of adding to the strength and representative character of the Imperial Court of Appeal.—*The Law Journal.*

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PARLIAMENTARY.

HOUSE OF COMMONS.

THE APPOINTMENT OF AN ADDITIONAL JUDGE.

The Attorney-General moved: 'That an humble address be presented to His Majesty representing that the number of the Puisne Judges of the King's Bench Division of the High Court of Justice now amounts to 15, and that the state of business in the said division requires that one additional Judge should be appointed to the said division under the first section of the Supreme Court of Judicature Act, 1910, and praying that His Majesty will be graciously pleased to appoint a new Judge of the said division of the High Court of Justice accordingly.' A statute, he said, was passed in 1910 for the appointment of two additional Judges, increasing the number from 15 Puisne Judges of the King's Bench Division to 17 with this condition attached—that, when the number of Puisne Judges was 15 or upwards, and it was desired to appoint one of those two additional Judges again, an address should be moved by

both Houses to His Majesty. It was only upon that condition that reappointment would be made. It was important to bear this in mind, because the House would observe that, assuming that the motion he was now presenting was assented to and an additional Judge was appointed, and on the next day another vacancy occurred, it would be necessary to come down to the House and move an address in order to fill up that vacancy. It was well known to the House that the reason which led to the statute of 1910 was the arrears which had accrued in the Kings Bench Division—the large list of actions which stood for trial—and the consequent injustice that was done to suitors who were not able to get their cases heard. There were 1,120 cases which were in the list for hearing in the King's Bench Division at Michelmas, 1910. Without going back to past history the House was convinced that that was an abnormal sate of things which reflected no credit on his country. The remedy proved very effective, because, from Michaelmas, 1910, to Michaelmas, 1911, the number of arrears decreased from 1,120 to 740, so that by the addition of the two Judges instead of an increase in the number of cases standing for trial there was a decrease of 380. No doubt, if that state of things had continued during 1911-12 and nothing abnormal had occurred the remedy would have proved quite effective and probably there would have been no arrears at the present moment, but during 1911-12 there were various reasons which had produced arrears increasing during the greater part of that years and increasing at the present time. The first of these causes was the death of Mr. Juctice Grantham, which occurred early in the year and consequently reduced the number of Puisne Judges from 17 to 16. At that time the state of business was such that the Lord Chief Justice did not think it necessary that the vacancy should be filled. Great inroads were being made on the lists and it was thought that the number of King's Bench Judges was sufficient to cope with the arrears. But almost simultaneously, and in fact a few days before the death of Mr. Justice Grantham, Mr. Justice Lawrance, who had sat for many years on the Bench, was taken ill and was never able to sit again. He retired at Easter, 1912, so that substantially during the whole of 1911-12, except for perhaps one month at the beginning, the King's Bench Division had only had 15 Puisne Judges. Further than that, there had been during that year some abnormal reasons.

The Causes of Delay. The illness among the Judges had been greater than usual. The Lord Chief Justice, who certainly had never yet learned to spare himself in the strenuous efforts he was always making to cope with arrears in the King's Bench Division and to keep the

administration of justice at the highest level, was himself taken ill and was absent for some considerable number of days. Other Judges had also been absent owing to illness. There had been a telephone case which certainly had taken the time of one learned Judge for over 40 days, and which he was afraid must still take a little time before that Judge arrived at the conclusion of his labours. In consequence, the King's Bench Division had been depleted to an extraordinary extent of its proper number of Judges. The result had been that for the year to Michaelmas, 1912, instead of overtaking arrears to the number of 380, they were 225 cases to the bad. Therefore the state of things was approaching what it was in 1910-11, the arrears at Michaelmas, 1912, being 966 cases, and that number had increased in the King's Bench Division since the beginning of the term. He submitted that that statement of fact was plain and convincing to show that, in consequence of the loss of the two Judges and the other causes he had referred to, the state of affairs at the present moment was very much what it was in 1910 when the House was good enough to pass the Act giving the extra Judges. He did not hesitate to say at the time that the appointment of the two Judges would not be an answer to the agitation that undoubtedly existed for administrative reform. The cause to which most of the delay and loss of judicial time was attributed was the circuit system. That system had been discussed, commended, and abused through many generations of lawyers. He was not going at the present moment to attempt to pass any judgment upon it, but could say from the inquiries he had made that all that the Judges could do without legislation had been done. He asked the House to bear that in mind. It was commonly said and thought by those who might not have been able to become quite so familiar with what had happened as he had been in his official capacity that much time was lost by Judges in travelling in various ways while on circuit. Whatever ground there might have been for that in the past, it certainly did not exist at the present moment. He did not mean to say that it might not be possible to have some administrative reforms in the circuit system which would cause some saving of judicial time, but it was useless to look to the Judges to do it, because they had exhausted the powers that lay in them, and it could only be done by legislation. When one heard suggestions of the grouping of county towns the difficulties were at once apparent.

Reform of the Circuit System. The Judges had no power to change the venue of the trial of prisoners from one county to another. However useful it might be to group towns of two counties, the Judges could not do it, however desirous they had shown them-

selves to meet this point, unless there was legislation by that House. There were many considerations that must be borne in mind when this matter came to be determined. It was not quite so easy as some hon. members thought. Since he had occupied his present position, and while Lord Loreburn was Lord Chancellor, the matter was under discussion, and day after day questions were put to him from both sides by hon. members who protested on behalf of their constituencies that there was some idea in the minds of the reforming authorities in the legal profession to take away the Assizes from the particular borough that the hon. members represented. Hon. members were only putting forward the views of their constituents. There was as a rule, a very great desire on the part of the inhabitants of the county towns to have His Majesty's Judges come there to try the cases. Sometimes it had been said that no reforms had been made since the Joint Committee sat and the Act of 1910 was passed, but that was not correct. In May, 1912, there was an amendment, by Order in Council, which had the effect of giving power to the Lord Chief Justice, with the sanction of the Lord Chancellor, to direct civil as well as criminal business to be taken at any Assize town on the autumn circuit, and effect had been given to that in Liverpool, Manchester, and a number of the great towns. The Judges had done their utmost to cope with the arrears which had been increasing; they had spared no effort and had repeatedly sat late. The figures as to the hours which the Judges sat in Court when on Assize were very striking. In 1905-6 they sat 395 hours more on circuit than they would have sat in London; in 1908 they sat 231 hours more: and in 1911-12 they sat 477½ hours more than they would have done in London, although the last number had reference to a period of a little more than a year. No allowance was made in those totals for the time spent in travelling or otherwise than in work in Court. Taking into account the work done at Assizes it would be found that the Judges of the King's Bench Division sat a greater number of hours during the year than did the Judges of any other division, or of the Court of Appeal. He was not taking into account the time spent in reading depositions, charging the grand jury, considering points of law, and weighing the evidence. The House must remember how important it was that a Judge who was sitting at first instance should be throughly alert, for the majority of cases were not carried beyond his Court. When trying prisoners or trying civil causes involving a man's fortune or—which was more important—his character, a Judge must be keen of perception, his mind must be open to receive every impression; he had to take a note of the evidence, to observe the demeanour of the witnesses, to listen to the

arguments of counsel, and to be alert in the strictest and strongest sense of the word. It would be the greatest danger to justice to ask the Judges to sit for so many hours that during some portion of the time their faculties could not be relied upon. A few days ago questions were put by two of his hon. friends suggesting that on the previous Monday only three Judges were sitting in the King's Bench Division of the High Court, and that they sat for only about an hour-and-a-half. On inquiry he found that every single Judge was accounted for. Five Judges were on circuit, nine were actually sitting in the King's Bench Division, and one Judge was sitting at the Central Criminal Court. The only Judge not sitting was Mr. Justice Lawrence, who presided over the Railway Commission, and who did not sit that day at his (the Attorney-General's) expressed wish, but was most usefully occupied in reading over the very voluminous documents connected with the transfer of the National Telephone Company's system in order to prepare himself to continue that work. There was no foundation for the idea that judicial time was being wasted.

The Government and the Bench. In May last it became apparent that the work of the King's Bench Division was becoming seriously in arrear, and the Judges, in answer to inquiries, informed him that in their opinion the list of arrears would increase materially and immediately if some addition were not made to the present number of Judges. In consequence of that a Committee of the Cabinet was appointed, consistsng of the Home Secretary, the President of the Board of Agriculture, the Chancellor of the Duchy of Lancaster, and the Postmaster-General. The first three were ex-Financial Secretaries of the Treasury, and, therefore, were not disposed by their training to give way in matters involving increased expenditure. Having made careful inquiry they came to the conclusion that one additional Judge at least was indispensable in order to cope with arrears. Referring to some of the reforms which had been suggested, he said that he was prepared to deal with the County Courts Bill as a non-controversial measure, and, in order to secure its passing, to eliminate the controversial part of the Bill. In regard to the duration of the Long Vacation he would not pronounce judgment, but he had always been of opinion that it could be curtailed. That could not be done without the consent of the Judges and legislation would be necessary. While he had expressed his own view on that subject he admitted that there were many counter-considerations to be put forward. Another view was that the length of each sitting might be increased; but no one who had sat as a Judge, Recorder, or Arbitrator would have failed to come to the conclusion

that, speaking generally, five hours' constant attention was the utmost that could be demanded if all that took place during that time was to be well considered and well weighed. He mentioned that to show how concentrated was the attention which a Judge had to give to a case, and it was for that reason he thought the number of hours a Judge sat was quite enough. The view the Government had taken was that to all these vexed questions there were two sides which ought to be very carefully considered, and that legislation ought not to be proposed until there had been a careful and exhaustive inquiry.

Appointment of a Royal Commission. The Government proposed, and without delay, to appoint a Royal Commission which would inquire into the various reforms which had been suggested. The terms of reference to the Royal Commission should not be drawn too widely, because if they were it might mean that the inqniry would be too long. He was quite certain that no one would welcome more heartily the appointment of such a Commission than the Lord Chief Justice and the Judges themselves. He hoped as a consequence of this step that, if the report of the Commission was in favour of making these reforms and legislation was necessary to carry them out, the Government would then give effect to that view and introduce the necessary legislation. It was most undesirable that in the Judiciary of the King's Bench Division there should never be a margin of reserve. We could not help Judges falling ill or absences occurring from various causes, and whenever any Judge had to be supplied for some other department or division of the High Court he was always drawn from the King's Bench Division. In the interests of the country it was far better when arrears had been disposed of that there should be a Judge with an occasional day idle than that persons should have to wait to have their cases tried because there was not a sufficient number of Judges. There were questions constantly occurring which caused men to have recourse to the Law Courts which it was essential should be tried speedily—such as questions affecting a man's character which had to be tried in order to relieve a man from certain suspicion. If a man could not get his case tried for months he might in that time be injured very seriously. Men who had perfectly good and valid claims sometimes had to settle the case because they could not afford to stand out of their money during the time it would take before the case came on for trial. That, to his mind, was really a scandal. Delay in these matters was very often the same thing as a denial of justice. That applied more particularly to the poor litigant: to the wealthy and powerful litigant it made little difference that there should be some

delay, but to the poorer and weaker litigant it meant very often his whole commercial life. In the interests of the country, when Parliament was dealing with vital questions of the character, such as the administration of justice, it was in the highest degree essential that the litigant who desired redress or the suitor who had a grievance should find an open door the moment he presented himself, without having to wait for a long period during which he had to suffer.

Mr. Lyttleton who supported the motion, said that delay and obstruction in the Courts of Justice tended to the disadvantage of the poorer litigant. To stand out of his money for six, twelve, or eighteen months absolutely ruined a poor man. He had known instances of a Judge on circuit sitting from 9 o'clock in the morning until 9 o'clock at night. Important as the considerations were in civil litigation they were more important in criminal investigations. A man seeking redress for an outrage in a criminal Court came at the compulsion of the State and the State was bound to assist him. The Judge who had to sift a case in which a poor, miserable man told his story in a stumbling, confused way ought not to be under the pressure of working against time and sit until 7 or 8 o'clock at night. If a Judge was pressed with the consideration that it was compulsory for him to finish the list before him; if he had to sit for long hours with his nerves seyerly tried, as they must be in his arduous duties, the efficiency of judicial work must be greatly impaired, and it would be difficult for a Judge to maintain the bearing he should have towards counsel and suitors in the Court where he presided. The Attorney-General had made a proposal for the appointment of a Royal Commission to inquire into various matters and alleged grievances. He supported the proposal for such an inquiry, though he did not anticipate much result from it. From abolition of the circuit system and the grouping of counties he did not think there would be more than a very small saving of public time, and there would be opposition from representatives of country boroughs that neither this nor any Government would like to encounter.

Sir A. Markham moved to leave out 'one additional Judge' and insert 'two additional Judges.' It was not desirable, he said, that on every occasion when a Judge retired or died there should be debates in the House dealing with the age for Judges, the hours of sitting, the Long Vacations, and the many reforms some members thought essential for the administration of justice. The Government had promised a Royal Commission to report on the whole question, and he asked for an undertaking that on presentation of

the report there should be no undue delay in proceeding forthwith to act on the recommendations.

The Attorney-General: Soon as practicable.

Sir A. Markham said that was rather vague. The Attorney-General had not given any indication of the composition of Commission, but it was essential that the public interest should be predominatingly represented upon that body. The terms of reference should cover the question of age.

The Attorney-General observed that the terms of reference would be sufficiently wide to cover that point and every proposition that had been mooted in the House with reference to this matter.

Sir A. Markham, continuing, said that personally he did not care whether they appointed 20 Judges, provided they were necessary for giving speedy justice to His Majesty's subjects. He believed he was one of the 954 suitors who were waiting to go before the Court. The House, having got this undertaking from the Government, should take a broad view. If two Judges were necessary to wipe off the arrears, then two Judges ought to be appointed.

Mr. Joynson-Hicks in seconding the amendment, said the Bill of 1910 which created two additional Judges was founded on the report of a committee as to the serious congestion in the King's Bench Division. If he could prove that the congestion to-day was as serious as it was in 1910 the Government would have no option but to accept the amendment. He himself knew of hundreds of cases in which litigants had been compelled to accept less than their legal rights because of the delay in getting their cases heard. Very frequently towards the end of July those who were acting for the defence were able to effect settlements a good deal cheaper than they otherwise could, because the plaintiff could not afford to wait. When justice was delayed it amounted in the case of poor people to a denial of justice altogether. In 1910 the arrears were 1,120, and in 1911 only 740, but to-day they had risen again to 966; and the Attorney-General had forgotten to mention that a large factor in the reduction in 1911 was the fact that two Chancery Judges were brought over to the King's Bench. It was not possible now for Chancery Judges to give help, for he was afraid that arrears were piling up in that division. The arrears in the divisional Court had also increased. In 1910 they were 189. They were reduced to 109 but had now gone up again to 260. And these cases were quite as important as any others. Figures showed that to-day the total arrears

in Law Courts in London were worse than in 1910. In 1910 there were 1,619 cases waiting to be tried in the different Courts. They were reduced in 1911 to 1,272, but in Trinity sittings this year they had risen to 1,620, and to-day there were over 2,000 cases awaiting trial in London. Moreover there were to-day for trial which had been ready for trial nearly 100 cases waiting for six months, and in these cases witnesses often had to be cajoled into staying in London or their evidence had to be taken abroad on commission. In July this year, the month immediately before the Long Vacation, when everyone was trying to get their cases disposed of, the state of affairs was nothing less than a grave scandal. One Court for special jury cases sat for 17 days, the number of cases disposed of being only 13; one Court for Common jury cases sat on only 13 days, disposing of only 11 cases; and one non-jury Court sat on ten days and disposed of 23 cases. Only 47 of such cases were disposed of in the month, while 161 fresh ones were entered for trial. Reference had been made to the long hours Judges sat at Assizes. There was, in this opinion, nothing worse for the proper administration of justice. The work was scrambled through, juries became sleepy, and witnesses were detained to all hours of the evening. Many cases had to be referred to London in order to clear the lists. He had been acting in an action between local authorities in the provinces. The litigants wished their case to be tried in London rather than at the Assizes, simply because they knew that at the Assizes it would be pushed and rushed through, and that they would not get that patient hearing which litigants so much desired. What the public really needed was Courts sitting continuously in London for the trial of special jury, common jury, and non-jury cases.

The Attorney-General said he would have been very pleased had it been possible to suggest two Judges in the Address. But a Cabinet Committee had inquired into the matter, and they only recommended the appointment of one Judge. It was upon that recommendation that the Government motion was based. Then a number of members might have stayed away from the debate under the impression that the course of the Government would only be to seek the appointment of one Judge. He thought the right course in the circumstances was that the amendment should be withdrawn. When the matter came up for discussion again—that was to say, whilst the Royal Commission was sitting—if it became necessary to appoint another Judge an Address could be moved for the purpose, and he had no doubt it would go through as a matter of form. If it were found after the Royal Commission had sat that it was necess-

ary to have an additional Judge or additional Judges then the matter ought to come before the House and be again considered.

Sir W. Ryland Adkins asked that the Royal Commission should inquire into the work of circuits in different parts of the country far from large cities. There were many places where, if a dispute arose and was ready for trial in July the persons interested had to wait until February to obtain judgment or had to bring the case to London at far greater expense. He hoped someone would be appointed on the Royal Commission who was familiar with the problems which raged round the circuit system and with the fact that those problems could not be solved merely by cutting down the circuit system. Regard must be had not only to the saving of time or of expense, but to the legitimate demand of the people in a locality to have justice brought as nearly as possible to their doors.

Mr. Duke said he could not suppose anybody who knew the state of things in the Courts believed that His Majesty's Judges represented to the Government that the appointment of one additional Judge would be sufficient to deal with the obstruction which at present existed. However desirable it might be that there should be two additional Judges, the Government was not in a position to accept the proposition on that occasion. It might be a great advantage to overhaul our judicial arrangements completely, but if they waited for the result of that investigation before dealing with the congestion of business they would postpone the remedy for the evils that had to be dealt with to a period that nobody could foresee.

Mr. Rawlinson pressed the Government to accept the amendment. The work entailed by the Criminal Appeal Act had occupied a great deal of the time of the Judges, and last year 128 days of judicial time were spent in the Court of Criminal Appeal. When that measure was passed the Government gave an assurance that if additional work were cast upon the Bench, help would be given. As to arrears, at the beginning of the present term there were 966 cases ready to be tried; the suitors wished to have them tried, and in that matter the interests of the legal profession were the same as those of the public. To appoint only one additional Judge would be simply tinkering with the matter. The work of the Court of Appeal was greatly in arrear; the Criminal Evidence Act, which enabled prisoners to give evidence in their own defence, had added to the time occupied by trials; and there was altogether more than enough work to make the appointment of two additional Judges necessary.

Mr. H. Craig said he did not object to any number of Judges if they were made use of, but when an Attorney-General came to the House and said there were arrears in the Court of King's Bench, therefore more Judges were wanted, he did not give a valid reason for the appointments. So long as arrears were accepted as a reason for more Judges so long there would be arrears; what was required was to get rid of the system which caused the arrears. Litigants could not find Judges, because they were sent away from where they were wanted to place where nobody was waiting for them. In the last report of the Council of Judges of the Supreme Court, which, under the Judicature Act of 1873, should be made annually, but the last report was that of 1892—he might use the Latin tag, *quis custodiet ipsos custodes ?* and ask, 'Who should make the Judges carry out their statutory duty ?' In the report of 1892 they made certain recommendations, and drew attention to the fact that in 40 of the 56 towns to which Judges were sent the average number of civil causes was so small that the sending them when their presence was urgently required in London was a waste of judicial time and injurious to the due administration of the law. The circuit system must be revised. There were some towns where there was heavy work, but there were other towns where there was no work at all. He wanted to see a beginning of those reforms which had been so frequently and so much considered and so consistently promised. For that reason he welcomed the appointment of the Royal Commission, and in the meantime would not oppose the appointment of one additional Judge.

Mr. Lancelot Saunderson, Mr. Hume Williams, and Mr. Llewelyn Williams having taken part in the debate.

Mr. Hills appealed to the Attorney-General to yield to the general opinion of the House in favour of the appointment of two Judges. As a solicitor he knew that there was great danger in having too small a staff of Judges. When the work got behind and the Judges were being pressed to clear it off, they were reluctant to give time to litigants who desired to postpone the trial of their case. The result was that cases were often brought forward too soon and people who had a perfectly good defence had not time to prepare it properly.

The Attorney-General said he still adhered to the view which he had already expressed, which was the view of the Cabinet Committee. He should oppose the amendment. At the same time he thought that on a matter of that kind the House was entitled to

express its opinion, and he did not propose to put on the Government Whips.

There voted:—For the amendment, 90; against, 121; majority against, 31. The Attorney-General's motion was challenged by some of the Labour members and the House divided, when there voted:—For the motion, 199; against, 14; majority for, 185.—*October* 25. *Law Journal.*

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HOUSE OF LORDS.

THE APPOINTMENT OF AN ADDITIONAL JUDGE.

The Lord Chancellor, in moving a motion in the same terms as that moved by the Attorney-General in the House of Commons, said there were a good many points about which there was a difference of opinion in connection with the general subject of the sufficiency of the Judges and the existing Court arrangements, but he did not propose to enter into that matter, which would be inquired into by a Royal Commission. For the time being the question was simply whether at this moment another Judge should be appointed, and the congestion of business seemed to require such a step to be taken in the public interest. Whether ultimately more Judges should be appointed or whether even the appointment of one would be necessary under better conditions was a question which the Government had no intention of prejudicing.

Lord Alverstone said the Joint Committee were unanimously of opinion that there was congestion of business in the King's Bench Division at the end of the legal year 1910. They recommended the appointment of two additional Judges, subject to revision when a vacancy occurred. At Michaelmas, 1910, the total number of cases in the King's Bench Division was 1,120—that was to say, 867 actions. The privilege of two extra Juges was enjoyed for little more than a year. It was most satisfactory. Mr. Justice Grantham died in November, 1911. At the beginning of the next term the total had gone down from 1,120 to 599, and the causes from 867 to 348. It was said by people who did not know that immediately there was a vacancy the Judges pressed for it to be filled. When Mr. Justice Grantham died he had advised Lord Loreburn, however that there was no need to fill the vacancy. The subsequent illness of Sir John Lawrance had resulted in a congestion of business approximating to that in October, 1910, and an additional Judge was required. People who did not understand said that the fault lay with the Judges in the King's Bench Division.

That was not the case. Reforms had been introduced in the circuit system, and nothing more could be done to improve it except by an Act of Parliament. It had been said that there was loss of judicial time owing to the circuit system. There was not the slightest foundation for the statement. He had had returns prepared which showed that in the years 1905 and 1906 395 more hours were occupied by the sittings of the King's Bench Judges on circuit than if they had been sitting in London. In 1908 the figures were 231 hours more; and from May 31, 1911, to August 31, 1912, 477 hours more. That was due to the fact that the Judges worked longer hours than they did in London. There had also been a suggestion that the Judges were slack. He had a record of the daily sittings, and he could say that, with the exception of the Lord Chief Justice, and unless they were prevented by illness, they sat on every available work every day. He did not say that it would not be possible to have an arrangement of business under which more might be done at Saturday sittings. The King's Bench Division was the one which was always drawn upon if a Judge was wanted elsewhere, and during the 12 months ended May, 1912, they had had to give 545 days to other work. Nothing which could be done could get more work out of the Judges. He would have been glad if the motion had been for two additional Judges. He did not want to press the Government unduly. He had hoped and believed that he had satisfied the distinguished member of the Cabinet who had examined him almost like a schoolboy on that point. It might be that Parliamentary difficulties had arisen which had not enabled the Government to ask for two extra Judges. The Judges of the King's Bench Division welcomed the Royal Commission. He did not know what the terms of reference would be, but if they were going to tackle the circuit system they had no easy task. It was not a mere question of additional Judges, for it involved a system which had been in existence for hundreds of years. If they were going to abolish the circuit system they would have to devise a system which would give as great facilities for people to have their cases tried as they had now. He feared the extra Judge would not enable them to keep down arrears, but probably the opportunity would arise for raising the question again.

The motion was agreed to.—*Law Journal.*

Attendance of Counsel:—*The Lord Chancellor*, in an appeal before the House of Lords on October 25, in which the leading counsel for the respondents was absent when the hearing was resumed, said that the House had a prior claim to the attendance of

counsel, and before absenting himself the learned counsel ought to have made application for leave to be absent. The House was very indulgent when cases of abslolute necessity were shown, but he wished it to be distinctly understood that the House expected that application for indulgence should be specially and personally made.—*Ibid.*

Court and Cold air :—Lord Justice Farewell complained in the court of Appeal the other day of the cold air, which, he said, seemed to be coming up into the court all round him. His Lordship asked Mr. Hughes, K.C., if he also felt the inconvenience. Mr. Hughes replied that he had felt chilly a day or two before when he was engaged in the court, but he was sitting down at the time, and he thought that was probably because his opponent's eloquence left him cold. Now when he was addressing the court felt quite warm.—*Ibid.*

CONTEMPORARY LEGAL LITERATURE.

A learned article appears in the August part of the American Law Review giving the origin, the history and the functions of the Hague Court of Arbitration. The writer traces the devolopment of the idea of judgment by an impartial tribunal between units greater than individual from that which existed between the independent cities of ancient Greece ; shows how the same was impossible in the Roman Empire which recognised no equal and how the idea was developed by the Grand Design of Henry IV, the works of Grotius, Voltaire and Rousseau, the formation of the American Republic and the growing necessity of having cheaper means of settling disputes between one nation and another that wish to avoid the increasing burdens of armament. In fact this last was the reason which prompted the Emperor of Russia to call a convention in the year 1899 which really proved to be the mother of the Hague permanent Court of Arbitration. The object of the Hague Court is 'The peaceful settlement of disputes between nations by Judges of their own chocie on the basis of respect for Law and by the creation of international commissions of enquiry to effect the above purpose." The writer gives the various important cases that were referred to the arbitration of this Court beginning from the Pius' Fund case and ending with the Savarkar case on each of which he gives in detail the saving that was effected by each and every one of the nations concerned, in the settlement of disputes which existed in some cases for very many years.

There is an instructive article in the August part of the Law Magazine and Review, on " Circumstantial Evidence " in which the writer traces the importance given to it for a long time by eminent English Judges and shows how such evidence played an important part in the investigation of various crimes. The writer gives illustrations of valuable circumstantial evidence afforded in some important cases by dates, time, distances, foot prints, handwriting, admissions, loose conversations, question of identity, finger prints, blood stains, and even by the record of a taximeter. The writer also refers to the usual observation that though the evidence afforded by each of these will be like little bits and scraps of information their cumulative effect in a given case has often been found overwhelming. Reference is also made as to what important part the existence or absence of motive plays in weighing evidence afforded by various circumstances which taken by themselves would seem to make the prisoner innocent or guilty.

In the same number of Law Magazine and Review in an article entitled " The Rights and Wrongs of Parents under the Education Acts (English)", a writer sums up the effect of the working of these Acts as follows :—Two considerations emerge from these cases. Is a parent obliged to accept the dictum of the School medical officer, and to submit his child to any medical treatment or surgical operation that may be prescribed, or has he any discretion to decide how far, if at all, he shall comply with the official medical view ? The second question is this :—Is it in accordance with sound legal practice that parents, who are admittedly respectable and take every care of their children should be prosecuted as criminals and their children taken from them, merely because they in a *bona fide* manner decline to allow them to run the risk of surgical operation ? It is a matter for regret that these questions are still without any authoritative decision. In view of this, such attempts by any public body to re-introduce legal fictions and to use the criminal law against persons who are in no sense criminals, can only be regarded as a tyrannical action and it may not be wrong to surmise that this attempt to so extend the medical powers of school authorities and to override the Education Act 1909 is also illegal.

In a recent number of the Canada Law Journal a writer sums up an article entitled " Settlement by Solicitors and by Counsel " as follows:—

Settlements of actions by Counsel or Solicitors, made in spite of of the client's express prohibition which however is unknown to the other side have been left by the authorities in this position.

1. Such a settlement will not be set aside by the Court on the application of either party and can be successfully relied upon as a defence or as a ground for staying proceedings.

2. The breach of, or refusal to perform such a settlement will in all cases support an action for any damages sustained thereby.

3. Specific performance of such a settlement is discretionary but will be granted, if the settlement be reasonably fair and of an entirely " business " character.

4. If as part of the settlement the assistance of the Court be required such assistance may be refused when in the opinion of the Court justice requires such a refusal.

5. Such assistance never has been and should not be refused if the settlement be reasonably fair and of an entirely " business " character.

BOOK REVIEWS.

Maxwell on the Interpertation of Statutes 5th Edition (1912) by the late Mr. F. Stroud, price 25 s., Published by Messrs. Sweet & Maxwell Limited, London. This is one of the leading text books on the subject of the interpration of statutes. The last edition was in 1904 edited by Theobald. The present edition is by the late Mr. Stroud of the Judicial Dictionary. The cases up to the end of 1911 have been incorporated and the Editor has spared no pains to maintain the reputation of the book. The present Edition we trust will be found useful by the profession.

Westlake on Private International Law assisted by Topham, 5th Edition. 1912, Price 18 s, published by Messrs. Sweet Maxwell Limited, London. A standard text book like Westlake's International Law hardly needs any introduction to the profession. Such of the cases as throw light on the principles of the subject and have been decided since the publication of the last edition have been utilized. The present edition well maintains the reputation of its predecessor and will we think be found useful by the profession.

Caste in Courts by L. T. Kikani, Pleader Rajkot, 1912 by Ganatra Printing Works, Rajkot. This is a useful book on a subject which is of much importance in this country. There has been a large body of decisions upon the subject and the author has in this book evolved some order out of the mass of conflicting decisions. The leading principles are stated concisely and we trust the book will be found useful by the profession.

Principles of Hindu Law by D. F. Mulla, Advocate, High Court, Bombay, Price Rs. 5, Published by Messrs N. M. Tripathi and Co. Princess Road, Bombay. This book is an useful addition to the literature on the subject of Hindu Law. The principles are stated in the form of sections and such a method is very useful to the student. The author has spared no pains to make the book useful both to the student and the practitioner.

The Indian Decisions Old Series 5th Volume by T. Venkasami Rao. The Fifth Volume of the Indian Decisions Old Series contains a reprint of the Indian Decisions in the two volumes by Mr. Strange. The present volume maintains the reputation of the volumes already published by the publishers.

The Lawyers' Companion Criminal Minor Acts in two volumes 1912 by the Law Printing House, Madras.

In these two volumes the minor acts of the Imperial and Local Legislature together with short notes have been given by the publishers and will be found immensely useful by Judges and Magistrates and practitioners in Criminal Courts.

The Statute Law relating to Companies in India by the Lawyers' Companion Series, 1912, by the Law Printing House, Madras.

We do not quite understand why the publishers should now give in a separate volume the statute law relating to Companies in India when the Viceroy's legislative Council is already considering the repeal of Acts VI of 1882 and the introduction of a new Act more in accordance with the law prevailing in England. The Bill will soon become an Act and much of the present labour will not

be found useful by the profession. However as containing in a compendious form the law relating to the subject the book will be found useful.

ACKNOWLEDGMENT OF PUBLICATIONS.

We beg to acknowledge the receipt of the following publications.

1. The All India Digest (Civil) Vols. 1-3 (1912) by the late Mr. T. V. Sanjeeva Rao, the Law Printing House, Mount Road, Madras.

2. Statute Law relating to Companies in India (1912). Do.

3. The Legal Practitioner's Act revised and brought up to June 1912, Do. Price Rs. 2.

4. The Law of Evidence in India by M. C. Sarkar, Retired Sub Judge Bengal by Messrs. M. C. Sarkar and Sons, 1912. Price Rs, 9.

5. The Law and Practice as to Receivers by the late W. M. Kerr, M.A., Sixth Edition 1912, by T. C. Watmough, B.A., of the Middle Temple. Sweet and Maxwell, Ltd., London. Price 10*s*. 6*d*.

6. The Law of Land Tenures, in two volumes, by G. R. Dandekar, High Court Vakil and Professor of Law, Government School, Bombay 1912. Messrs. N. M. Tripathi & Co., Price Rs. 12.